STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SBC Communications Inc.,	)	
SBC Delaware Inc.,	)	
Ameritech Corporation,	)	
Illinois Bell Telephone Company d/b/a Ameritech	)	
Illinois, and Ameritech Illinois Metro, Inc.	)	
	)	
	)	ICC Docket No. 98-0555
Joint Application for Approval of the	)	
Reorganization of Illinois Bell Telephone Company	)	
d/b/a Ameritech Illinois, and the Reorganization of	)	
Ameritech Illinois Metro, Inc. in Accordance with	)	
Section 7-204 of the Public Utilities Act and for All	)	
Other Appropriate Relief	)	

VERIFIED JOINT APPLICATON FOR REHEARING AND CLARIFICATION

AT&T Communications of Illinois, Inc., MCI WorldCom, Inc., Sprint Communications Company L.P. d/b/a/ Sprint Communications L.P., and 21st Century Telecom of Illinois, Inc. (collectively, "Joint Movants") jointly request the Illinois Commerce Commission to reconsider and clarify its September 23, 1999 Order in this docket ("Merger Order"), pursuant to Section 200.880 of the Commission's Rules of Practice. The Commission should clarify its Order to remove any ambiguity about Ameritech's duty to provide the Unbundled Network Element Platform ("UNE Platform"). It should revise the Order to prevent Ameritech from using the TELRIC study filing requirement as a means of delaying pricing for critical network elements. And, the Commission should direct SBC/Ameritech to import arbitrated interconnection provisions from other states.

ARGUMENT

I. Ameritech Should Provide the UNE Platform Without Condition or Limitation.

Joint Movants seek rehearing of the portion of the Commission's Order that addresses the UNE Platform.[1] Ameritech, as the Commission is aware, has long pursued a regulatory and litigation campaign to avoid having to provide the UNE Platform. The reason for its intransigence is obvious: The Platform can serve as the basis for broad-scale local service competition for residence and small business customers. For example, as has been widely reported and as the record reflects, MCI WorldCom is currently using the UNE Platform to serve over 100,000 lines on a state-wide basis in New York.[2] In Illinois, notwithstanding the Commission's Order three years ago in the Wholesale/Platform Case[3] requiring the local switch platform to be made available, there is no Platform-based competition whatsoever in Illinois.

One of the network elements that makes up the Platform is shared transport. Since late 1996, Ameritech's resistance to the UNE Platform has taken the form of objecting to shared transport as defined by the FCC in its local interconnection proceedings[4] and as ordered by this Commission in the TELRIC proceedings.[5] Despite

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[1] Order at 207, ICC Docket No. 98-0555 (Sept. 23, 1999) ("Merger Order"). The paragraph in question begins: "One issue which generated comment concerns the so-called UNE Platform. . . ."

[2] MWCOM Ex. 3.0 (Lichtenberg Rebuttal on Reopening) at 13-14.

[3] *Wholesale/Platform Case*, ICC Docket Nos. 95-0458/0513 (consol.) (June 26, 1996).

[4] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98/95-185, First Report and Order (Aug. 1, 1996) and Third Order on Reconsideration (Aug. 17, 1997).

[5] *Illinois Commerce Commission On Its Own Motion, Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and*

these previous orders, Joint Applicants cast their offer in this docket to make available "interim" and "long term" versions of shared transport as a major procompetitive concession. The Commission, taking Joint Applicants' representations at face value, accepted the shared transport commitment as a condition to approval of the merger.[6] As the Commission noted, a proper shared transport offering "is crucial in developing this open market."[7] Accordingly, it ordered Ameritech to provide an "SBC/Texas interim version of shared transport" and to "import the rates agreed-to in Texas" (as interim rates until Illinois-specific rates could be determined).[8]

SBC/Ameritech has not complied with the Commission's Merger Order. Ameritech's interim shared transport offering, filed on September 21, 1999, and approved on one day's notice,[9] on its face purports to make shared transport available as a general offering in combination with unbundled local switching; it is not available, however, as a part of a UNE Platform. Ameritech included this anti-Platform restriction even though it fully understands what the UNE Platform is and stated on the record that it would make the Platform available. Specifically, in his Rebuttal Testimony on Reopening, Ameritech's witness Mr. Appenzeller testified as follows:

Termination of Traffic, Illinois Bell Telephone Company Proposed Rates, Terms and Conditions for Unbundled Network Elements, Second Interim Order at 107, ICC Docket Nos. 96-0486/0569 (consol.) (Feb. 17, 1998) ("Ameritech TELRIC Order").

[6] Merger Order at 183.

[7] *Id.* at 187.

[8] *Id.* at 186-87.

[9] *See* Unbundled Local Switching-Interim Shared Transport Tariff, Advice No. 7160, Sheet No. 35 ("ULS-IST" tariff). Administrative notice of this tariff is requested pursuant to Ill. Admin. Code Title 83, Section 200.640 (1999).

> Let me first state that when I use the term "UNE Platform," I am referring to a pre-assembled, pre-existing combination of unbundled network elements that could be used by a CLEC to provide end-to-end service. In other words, this would be a combination of local loop, shared transport, and local switching (and other associated elements already combined with those three elements). Ameritech Illinois will provide such a pre-assembled, end-to-end combination to CLECs upon request. The pre-existing combination could be ordered through Ameritech Illinois' existing OSS interfaces.
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> This commitment is, of course, subject to the elements of the combination being required by the requesting CLEC's interconnection agreement (which typically means the agreement must be amended to require "interim" shared transport).[10]

Contrary to Ameritech's representations to the Commission, however, there is nothing "end-to-end" about Ameritech's interim shared transport offering as filed and it in fact precludes shared transport from being used in combination with other elements to provide the Platform. Under Ameritech's recent interim shared transport tariff ("ULS-IST tariff"), to achieve a combination of shared transport/unbundled local switching with loops (i.e., the Platform), CLECs must collocate in each Ameritech central office and CLECs must perform a cross-connection to combine the loop with the switch port.[11] Collocation costs can exceed $100,000 per central office. This requirement is unnecessary and illegal because the loop and switch port are *already connected*.

The collocation requirement is not only contrary to Ameritech's direct representations in the docket, it is in direct conflict with the Supreme Court's decision in AT&T v. Iowa Utilities Board,[12] which upheld FCC Rule 315(b) on combinations. Rule 315(b) prohibits Ameritech from separating network elements that it currently

[10] SBC/Ameritech Ex. 12.1 at 12 (Appenzeller Rebuttal on Reopening) (emphasis supplied).

[11] *See* ULS-IST Tariff, Sheet No. 35.

[12] 525 U.S. 366, 119 S. Ct. 721 (1999).

combines.[13] The Supreme Court upheld this rule, noting that it served to bar ILECs from imposing "wasteful reconnection costs" on CLECs.[14] Ameritech's collocation requirement in its shared transport tariff is a wasteful, illegal and prohibitively expensive reconnection cost that must be stricken.

Moreover, the collocation requirement violates the Commission's Merger Order, which directs Ameritech to provide the "SBC/Texas interim version" of shared transport. SBC's Texas version of shared transport does not require collocation.[15] Joint Applicants having touted the Texas "model" as a procompetitive benefit of the merger and having gained the Commission's endorsement in the Merger Order, have now invented yet another stratagem for avoiding making the Platform combination including shared transport available. [16] Because collocation is not required for shared transport in Texas, the inclusion of this requirement plainly violates the Commission's directive to provide "Texas-style" shared transport. Moreover, the Commission's Order refers to shared transport as that discussed in Mr. Appenzeller's testimony.[17] Mr. Appenzeller made no

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[13] 47 C.F.R. § 51.315(b).

[14] *Iowa Utilities Board*, 525 U.S. 366, 119 S. Ct. at 737.

[15] SBC/Ameritech Ex. 11.0 (Hopfinger Direct on Reopening), Attachment 3.1.

[16] To ensure that there would be some indicia of Ameritech's willingness and ability to provision the UNE Platform, MCI WorldCom requested that the Commission require Ameritech to allow CLECs to transition existing resale customers to facilities-based service provided via the UNE Platform prior to the consummation of the merger. MWCOM Ex. 3.0 (Lichtenberg Rebuttal on Reopening) at 4, 35. In fact, MCI WorldCom requested Ameritech to transition its entire Illinois resale customer base to service provided via UNE-P. *MCImetro Access Transmission Services, Inc. v. Illinois Bell Telephone Co.*, ICC Docket No. 99-0379, Order at 10 (Sept. 22, 1999) (citing MWCOM Ex. 2.0 at 4). Despite the purported availability of shared transport, Ameritech has yet to transition MCI WorldCom's customers to service provided via the UNE Platform.

[17] Merger Order at 186.

mention of a collocation requirement.[18] In fact, Mr. Appenzeller specifically testified that Ameritech would provide pre-assembled, end-to-end UNE combinations, which by definition means no collocation.

Not only that, the pricing for shared transport in the ULS-IST Tariff is outrageous on its face and it is inconsistent with the Merger Order. Although the shared transport product is the same as that referenced in the Commission's TELRIC Order,[19] the tariff price is nearly *5 times* greater than the price ordered in the TELRIC docket ($.00647 vs. $.00134 per minute of usage). The nonrecurring charges are also inconsistent with the Commission's Order: CLECs would be required to pay Ameritech $227 in nonrecurring charges for every customer they serve with shared transport, nearly *10 times* SBC's $23 nonrecurring charge in Texas. In short, as SBC/Ameritech is fully aware, the ULS-IST Tariff is unusable by CLECs and it is an affront to this Commission. The Commission should summon SBC's Compliance Officer to explain, in public, SBC/Ameritech's refusal to comply with the Merger Order.

SBC/Ameritech has recently offered Platform amendments to its interconnection agreements with CLECs that do not include the collocation requirement. These provisions are apparently intended to satisfy the Platform commitment they offered up to the FCC Staff, but they are unacceptably (and impermissibly) time bounded and limited in their market application. These restrictions limit the Platform offering (among other things) to residential as distinct from small business customers and "cap" the Platform at

[18] SBC/Ameritech Ex. 12.0 at 3-11 (Appenzeller Direct on Reopening).

[19] Both the tariffed version of shared transport and that ordered in the Commission's TELRIC Order are defined in accordance with the FCC's Third Report and Order on Local Competition.

302,000 lines in Illinois.[20] This figure includes resale lines also, so it is likely that the number of UNE Platform lines will be significantly less than 302,000. Moreover, this "promotional" offering is open only for a "window" of three years. In other words, the offer is (1) limited to a small (single-digit) percentage of Ameritech's market and (2) available only for a limited period of time. These restrictions are wholly inconsistent with this Commission's Wholesale/Platform Order, which contained no such limitations.[21] They are also inconsistent with Ameritech's representations that the FCC conditions would supplement, not limit, Illinois conditions.[22]

Thus, Illinois CLECs are now faced with the alternatives of using the Platform with the exorbitant and infeasible collocation requirement or using the Platform with the anticompetitive restrictions (caps, residential only and three-year sunset) that violate the Commission's Wholesale/Platform Order. If the Commission is interested in fostering mass market local exchange competition, and Joint Movants believe it is, the real issue is (and always has been) whether Ameritech will or will not provide "end-to-end UNE combinations" or the "UNE Platform," as described by Ameritech itself through Mr. Appenzeller, and without these new anticompetitive restrictions. Absent an unequivocal, unqualified and enforceable requirement to do so, mass market local competition will not

[20] *See* FCC Merger Order, Appendix C at 54. Assuming that Ameritech ever provides access to the UNE Platform, the record indicates that such access at most will represent choice for less than 5% of the approximately 7 million total lines that Ameritech serves in Illinois. Tr. at 2076. Thus, the record is clear that if Ameritech is allowed to limit the number of lines that can be served via UNE-P, the Commission would not be ensuring that the local market is open; to the contrary it would be protecting in excess of 95% of Ameritech Illinois' local exchange market.

[21] Wholesale/Platform Order at 63-64.

[22] Tr. at 1846-47 (Kahan).

occur in Illinois.[23] Accordingly, the Commission should order Ameritech/SBC simply to make the UNE-Platform available, immediately and unconditionally. To avoid more maneuvering by Ameritech and afford CLECs much-needed and long-awaited pricing certainty, the Commission should specifically delineate the Platform pricing in its Order. Pricing should be the sum of the individual element rates adopted by the Commission in the TELRIC proceeding and tariffed by Ameritech: $2.59 per month for loops (Access Area A);[24] plus $5.01 per month for ports;[25] plus $0.00134 per minute of usage.[26] Per the Merger Order, there should be no "glue charges" and nonrecurring charges should be zero.[27] Any problem Ameritech has with this pricing can be addressed in the TELRIC II proceeding. Furthermore, CLECs should not be required to amend their interconnection agreements to obtain the Platform.

In its exceptions to the Hearing Examiner's Proposed Order on Reopening, AT&T submitted proposed language to clarify the paragraph referred to above concerning the UNE Platform (now at Merger Order p. 207) to eliminate the ambiguous and qualifying language originally proposed by Joint Applicants. That text also added a specific commitment on the offering of UNEs and UNE combinations, because none was included in the HEPOR (similarly, none appears in the Merger Order).[28] This most

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[23] *See* MWCOM Ex. 3.0 (Lichtenberg Rebuttal on Reopening) at 11-20 (discussing the necessity of unrestricted UNE Platform for mass market residential and small business competition).

[24] Ameritech tariff Ill. C.C. No. 20, Pt. 19, § 3, 1st Rev. Sheet, No. 40. Loop prices are $7.07 for Access Area B and $11.40 for Access Area C.

[25] Ameritech tariff Ill. C.C. No. 20, Pt. 19, § 2, 1st Rev. Sheet, No. 7.

[26] Ameritech TELRIC Order at 107 (as amended); Amendatory Order at 1 (Apr. 6, 1998).

[27] Merger Order at 206-07.

[28] AT&T Brief on Exceptions (Reopening), August 17, 1999, AT&T Exception No. 6 at 49.

recent evidence of Ameritech's refusal to provide an unrestricted version of the Platform highlights the critical need for express, specific Platform language in the Order. This language (slightly modified) is appended for convenient reference as Attachment A. Joint Movants respectfully urge the Commission to grant rehearing and to modify the Merger Order accordingly.

II. The Commission Should Clarify its Order to Ensure That Its Requirement That Ameritech File "Updated" TELRIC Studies Is Not Used as a Reason for Further Delaying the Existing TELRIC Compliance Proceeding in Docket No. 98-0396.

With the admirable intent of providing a benefit to CLECs and mitigating any adverse rate impacts on retail customers, the Merger Order adopts the recommendations of the Staff that Ameritech be required to submit "updated" Long Run Service Incremental ("LRSIC"), Total Element Long Run Incremental Cost ("TELRIC") and shared and common cost studies within six months after receiving final regulatory approval of the merger.[29] The Commission posits that it will use the revised studies to evaluate Ameritech's rate rebalancing proposal, in two on-going proceedings in which certain Ameritech wholesale rates are under investigation (Docket Nos. 98-0396 and 98-0397), and in other investigations as deemed appropriate.[30] For the reasons discussed below, Joint Movants submit that the Commission should clarify its Merger Order to ensure that it is not construed by Ameritech or others as a reason to further delay the on-going TELRIC compliance proceeding in Docket 98-0396.[31]

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[29] Merger Order at 124, 198, 242.

[30] *Id.* at 124.

[31] Such a clarification would be fully consistent with the positions taken by AT&T and MWCOM that the TELRIC compliance proceeding in Docket 98-0396 should not be delayed and issues

While the Commission's requirement that updated LRSICs should be submitted may be integral to its finding that the merger is not likely to have any adverse rate impacts on retail customers under Section 7-204(b)(7) and so that those studies can be used to evaluate Ameritech's rate rebalancing plan and in the alternative regulation review proceeding, the updated LRSIC requirement is not aimed at Ameritech's wholesale carrier customers that purchase unbundled network elements ("UNEs"), interconnection and transport and termination services. It is the Merger Order's requirement that updated TELRIC studies be submitted that is specifically intended to assist carriers that purchase Ameritech's UNEs, interconnection and transport and termination services by passing merger related savings to those carriers through reduced rates resulting from modified TELRICs.[32]

While reductions to Ameritech's existing rates for UNEs, interconnection and transport and termination would be a welcome development, the Joint Movants submit that the TELRIC studies through which the Commission intends to achieve those reductions should be investigated in a proceeding that is separate and apart from the TELRIC compliance proceeding in Docket 98-0396. The updated TELRIC study requirement -- specifically the Merger Order's reference that the updated studies should be used in the on-going TELRIC investigations -- has cast doubt over the need for expeditious resolution of the issues in that proceeding. Ameritech has already seized upon that language as an excuse for delaying TELRIC compliance and the establishment

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already litigated should not be relitigated as a result of updated cost studies. AT&T Brief on Exceptions to Proposed Order on Reopening at 58-60;
MWCOM Brief on Exceptions to Proposed Order on Reopening at 18-19;
See also MWCOM Ex. 4.0 (Campion Rebuttal on Reopening) at 16-17.

[32] Merger Order at 149.

of "permanent" rates for nonrecurring charges, shared transport and a determination as to what, if any, nonrecurring charges should apply to combinations of UNEs. Ameritech pointed to that language when it requested a "general continuance" of the TELRIC compliance case on May 3, 1999. MCI WorldCom, AT&T and Sprint all opposed that motion, but the Examiner granted it expressly relying on that language.[33] A status has been set in Docket 98-0396 for November 18 to allow the Commission sufficient time to act on requests for rehearing of its finding that updated TELRICs should be used in for the purposes of that proceeding.

The Joint Movants submit that the Commission needs to make absolutely clear that a schedule for testimony and hearings in Docket 98-0396 should be established quickly and that the issues set forth in the Commission's investigation Order in 98-0396 should move forward without further delay.[34] The Commission can also make clear that a separate docket will be established to investigate any "updated" TELRICs that may be filed by Ameritech, but that Docket 98-0396 is not going to be used as a vehicle to relitigate all of the substantive issues that were exhaustively litigated over approximately one and one-half years before the Commission issued its order in the original Ameritech TELRIC proceeding.[35] If the Commission fails to clarify its Merger Order on this issue,

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[33]Notice of Continuance and Notice of Hearing Examiner's Ruling, Docket No. 98-0396 (May 25, 1999). MCI WorldCom filed a Petition for Interlocutory Review of that ruling, but that was denied by the Commission on July 8, 1999.

[34]In fact, the other "TELRIC" proceeding that the Commission's Order contemplates using updated studies for, Docket 98-0397, is moving forward with testimony and hearing dates despite the language contained in the Commission's Merger Order.

[35]Ameritech TELRIC Order.

it will lead to further confusion, delay and impede the onset of local competition in Illinois with no countervailing benefit to CLECs or Ameritech's customers.

The issues under investigation in the TELRIC compliance proceeding are fairly narrow and straightforward, and they are of great importance to CLECs. Issues that are critical to local entry business plans -- like permanent rates for nonrecurring charges, common transport and combinations of UNEs – remain unresolved while the TELRIC compliance proceeding lingers.[36] As the second anniversary of the Ameritech TELRIC Order rapidly approaches, CLECs are forced to wait for the completion of what was started in the original TELRIC proceeding over three years ago while Ameritech argues that TELRIC compliance should be put on hold due to requirements contained in the Merger Order. Yet further delay is exactly what the Commission counseled against in the Ameritech TELRIC Order where it recognized the need of CLECs need to have certainty with respect to TELRIC rates and the need to achieve that certainty in a timely fashion:

> We recognize that this proceeding involves many difficult and technical issues. We are concerned that disputes may arise regarding the proper interpretation of this Order. Accordingly, we shall make this an Interim Order and establish a procedure for expedited compliance review. Ameritech Illinois has suggested that it be required to file "updates" to the TELRIC studies. We reject this suggestion.

As TCG stated:

> CLECs need to have sound and stable rates in order to prepare business cases to determine where and how to compete with incumbents - and perhaps where not to compete. If uncertainty about prices becomes prolonged, this condition alone can retard the development of efficient competition.

[36]The May 22, 1998 Staff Report detailed the requirements of the Ameritech TELRIC Order, formed the basis for the initiation of the TELRIC compliance investigation and has been made a part of the record in that proceeding (98-0396).

> It has now been over two years since we first attempted, in the Customers First proceeding, to establish reasonable ground rules to enable the development of local exchange competition. Competitors still don't know many of the rules of the game. We believe that this proceeding represents an opportunity to make our best effort to establish what we believe to be just and reasonable rates, terms and conditions for unbundled network elements and interconnection in compliance with the Act. We note that the time framework of our review of forward-looking costs in this proceeding is reasonably consistent with the two or three year duration of the interconnection agreements. We believe that those interconnection agreements, which contemplate renegotiation and the submission of disputed issues to the Commission, establish a reasonable timetable for any necessary Commission reconsideration of the issues herein. We have necessarily deferred consideration of some issues, but we believe that with this Order, together with the interconnection agreements which have been approved, the framework for competition is now in place. It is time to send telecommunications carriers out of the hearing rooms and into the marketplace.[37]

Further illustrating the difficulty that stems from lack of uncertainty, the Commission announced its frustration when it rejected as unsupported Ameritech's nonrecurring charges and the tariff that purportedly described when those charges applied:

> We are also concerned that the tariff Ameritech Illinois has proposed in this proceeding makes it impossible for the Commission, new entrants and even Ameritech Illinois itself, to cogently determine how and when nonrecurring charges apply. The Commission, therefore, orders that all tariff provisions relating to any nonrecurring charges be specific and clear as to how and when those charges apply.[38]

Ameritech has every incentive to delay the TELRIC compliance proceeding. The longer that Ameritech is able to delay the establishment of TELRIC rates for nonrecurring charges, shared transport and combinations of UNEs, including the UNE

[37] Ameritech TELRIC Order at 134-35 (emphasis added).

[38] *Id.* at 90.

platform, the longer it can protect its lucrative monopoly stranglehold on the local market. Resolving the fundamental and narrow compliance and pricing issues quickly is what the Commission contemplated in the Ameritech TELRIC Order.[39] Further delaying the TELRIC compliance proceeding is directly at odds with the need to attain certainty with respect to rates, terms and conditions for interconnection and UNEs,[40] and it is not necessary for the Commission to achieve the allocation of merger savings to Ameritech's wholesale carrier customers through reduced rates for UNEs and interconnection obtained through "updated" TELRIC studies.[41]

It is simply not tenable that the Commission contemplated further delays in the establishment of permanent rates for nonrecurring charges, shared transport and combinations of UNEs by adopting Staff recommendations that were clearly intended to benefit CLECs – but delay is what the what the order invites. Delay will only perpetuate rate uncertainty and hamper CLEC entry into the local market.

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[39]In the ordering paragraphs of the Ameritech TELRIC Order, the Commission directed Ameritech to file by April 3, 1998 (within 45 days of February 17, 1998) revised tariffs in compliance with the Order, contemplating that hearings on the compliance filing would be held within 14 days from the time the tariff was filed. Ameritech TELRIC Order at 137. Thus, hearings on compliance should have commenced by April 17, 1998.

[40]Indeed, the rates for interconnection and UNEs that will result from the TELRIC compliance proceeding are intended to be made a part of existing interconnection agreements. Ameritech TELRIC Order at 1. Many of the interconnection agreements that contemplate incorporation of TELRIC rates will be expiring in the not too distant future. For example, the MCImetro/Ameritech Illinois interconnection agreement expires May 5, 2000. It would be painfully ironic if permanent TELRIC rates for nonrecurring charges, shared transport and the combinations of elements contained in that agreement were not determined until after the initial term of MCImetro contract expires.

[41]The Commission should make clear that it would reject any attempt by Ameritech to use the Merger Order's directive to "update" its TELRIC studies as a means to increase any of the "permanent" rates for UNEs, interconnection and transport and termination that were established pursuant to the Ameritech TELRIC Order.

For these reasons, the Joint Movants respectfully submit that the language contained in the Merger Order that contemplates the submission of "updated" TELRIC studies for use in the on-going TELRIC proceedings is unnecessary, contrary to the conclusions contained in the Commission's Ameritech TELRIC Order and would hurt rather than benefit CLECs.

The Commission can achieve allocation of merger savings to CLECs through "updated" TELRICs in a separate proceeding, while at the same time requiring expeditious resolution of the narrow, straight forward issues in Docket 98-0396. Accordingly, the Joint Movants respectfully request that the Commission remove from the Merger Order the language that indicates updated TELRICs are to be used in the on-going TELRIC investigations and specifically indicate that the updated TELRICs will be investigated in a separate proceeding the purpose of which will be to examine the flow through of merger savings to Ameritech's carrier customers in the form of reduced rates for UNEs, interconnection and transport and termination of traffic. Finally, the Merger Order should clearly state the Commission's desire to have the issues in Docket No. 98-0396 resolved as quickly as possible.

III. The Commission Has the Authority to Import Arbitrated Terms from Other Jurisdictions.

Condition 27, Interconnection Condition A, should be modified to permit CLECs to import arbitrated interconnection terms and arrangements from other SBC/Ameritech states into interconnection agreements in Illinois. Because of the pro-competitive benefits, many of the intervenors in this case asked the Commission to include this

condition.[42] The Post Exceptions Proposed Order on Reopening (PEPOR) accepted the intervenors' proposal stating: "Joint Applicants should provide CLECs in Illinois . . . interconnection agreements/arrangements . . . that any SBC ILEC affiliate has voluntarily negotiated, or has been ordered to provide under an arbitration in another state."[43] The arbitrated term condition, however, is omitted from the Commission's final Order and no explanation is given in the Order for its removal. Movants were present at the Commission's open meeting when the legal authority for including the arbitrated term was questioned and the Office of General Counsel was asked to provide an opinion. Although Movants have not had access to any opinion generated by the Commission's Legal Counsel, Movants demonstrate herein that the Commission has the ability and authority under both state and federal law to impose the arbitrated term condition.

First, the Commission has full authority to make such a finding under Section 7-204(f) to promote the public interest. Second, the language of Section 252 of the Act does not prohibit this Commission from approving interconnection agreements that contain arbitrated terms from other states. Third, it makes good public policy to jumpstart competition in Illinois and take the best pro-competition policies from other states and import those into Illinois.

A. The Commission's Broad Authority under Section 7-204(f) Permits it to Craft Conditions That Promote Competition

The Commission has the authority under Section 7-204(f) to impose any conditions that are necessary to protect the interests of Ameritech Illinois' customers.

[42] AT&T, MCIW, and Sprint all requested the Commission to add this term to the list of conditions if the Commission approved the merger.

Included in the Commission's authority is the ability to order Joint Applicants to make interconnection terms imposed upon SBC/Ameritech in other states as a result of arbitration available in Illinois. The language in the Commission's Order confirms this viewpoint.

> Turning again to the statutory language of Section 7-204(f) as the best indicator of legislative intent, the Commission finds that the only limitation put upon our discretion is that the conditions we attach be, in our good and informed judgment, of a type necessary to protect the interests of the company and its customers consistent with the interests outlined by Section 7-204(b). We believe, that it is the evidence of record in the proceeding, relevant to the interests as outlined in Section 7-204(b), which particularly informs our judgment and sets out the scope of our discretionary authority.[44]

Thus, the Commission has announced that it has the authority to impose conditions supported by the record that protect the interests of Ameritech Illinois' customers. There is no doubt that many parties on the record suggested that arbitrated interconnection terms from other states be made available in Illinois.[45] As Movants explain below, adoption of this condition will quicken the introduction of competition in Illinois by building on the pro-competitive policies adopted by other states. The promotion of competition is one of the tenets of the Illinois Public Utilities Act and is an interest defined in section 7-204.[46] Consequently, under the standard announced by the

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[43] PEPOR at 51. The first bullet point of Condition 29 in the PEPO memorializes the conclusion that arbitrated terms imposed upon SBC affiliates should be made available to CLECs in Illinois. PEPOR at 142.

[44] Merger Order at 153.

[45] Merger Order at 167 (AT&T position summarized); p. 169 (Sprint position summarized); p. 170 (ACI, Covad and Nextlink's position summarized).

[46] *See also* 220 ILCS 5/13-103(d), (e) (1999).

Commission in this case, the adoption of arbitrated terms into Illinois interconnection agreements is a condition that the Commission may adopt.

The Commission further explained its ability to adopt conditions that promote competition by ordering Joint Applicants to provide shared transport in Illinois immediately. The Commission explained that it has the authority to reduce barriers to CLEC entry and to promote competition.

> Section 7-204(f) gives this Commission the power to impose terms, conditions or requirements on this merger which protect the interests of Ameritech Illinois' customers. The Commission determines, in its judgment, that it is in the best interests of those customers to have access to an open local exchange market in Illinois. Shared transport is crucial in developing this open market. The offering of shared transport by Ameritech Illinois to its competitors obviates the need for CLECs in Illinois to build or purchase dedicated interoffice transport facilities which are duplicative of existing Ameritech Illinois facilities. Since building or purchasing existing facilities is prohibitively expensive, the Commission deems the offering of shared transport as lowering the barriers to entry for CLECs in the Illinois local exchange market and thereby improving the environment for competitive entry. Any condition which leads to a more open local exchange market and real telecommunication service options for customers, as this condition does, serves the interests of the customers. Thus, we find that we do have the authority to impose this condition.[47]

In addition to ordering shared transport, the imposition of a condition requiring Ameritech Illinois to offer any interconnection terms that an SBC ILEC affiliate[48] offers in any state (whether it be negotiated or ordered as a result of an arbitration) will lead to a more open local exchange market and real telecommunications options for Illinois

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[47] Merger Order at 184 (emphasis added).

[48] SBC ILEC affiliate is defined in the Commission Order as "any affiliate or subsidiary of SBC thereof upon the closing date of this merger, including, but not limited to its affiliated interests resulting from the acquisition of Ameritech Corporation, its affiliates and subsidiaries as well as any companies acquired or otherwise controlled by SBC, its affiliates or subsidiaries resulting from future transactions upon which this Commission may exert jurisdiction." Merger Order at 172-73.

customers. Therefore, the Commission has the authority under Illinois law and the language set forth in this Order to impose the importation of arbitrated terms.

B. Section 252 of TA 96 Does Not Prohibit the Commission From Approving an Interconnection Agreement Containing Terms Arbitrated in Other States

The effect of ordering SBC to import arbitrated provisions from other states is simply to speed up the Section 252 process, not do away with it. The language of Section 252 of TA 96 does not prohibit this Commission from approving an interconnection agreement that contains terms arbitrated in other states. The inclusion of terms arbitrated in other states and submitted to this Commission for approval is not one of the listed reasons in Section 252 for disapproving interconnection agreements.[49] Nothing in Section 252 explicitly or implicitly bars the Commission from approving interconnection agreements that that contain terms arbitrated in other states. The Commission's authority is not preempted by federal law. Federal law does not prevent this Commission from ordering an importation of arbitrated terms condition. Furthermore, the Commission's interconnection condition contemplates an interconnection collaborative, negotiations, arbitrations and Commission approval. This process is no different than the process outlined in Section 252. Therefore, there can be no basis for the argument that Section 252 somehow bars the importation of arbitrated provisions from other states.

C. The Importation of Arbitrated Terms from Other States Will Accelerate Competition in Illinois

[49] This is true regardless if a submitted interconnection agreement is in the category of a "negotiated agreement" under §252(e)(2)(A) or an "agreement adopted by arbitration" under §252(e)(2)(B).

While Interconnection Condition A as it is currently styled might make available some interconnection terms that currently do not exist in Illinois, it is unlikely to provide much of a competitive benefit for CLECs in Illinois. The importation of the terms that Joint Applicants have agreed to in other states may not be any different than the terms already available in Illinois. It is not clear how this condition will benefit competition. The Commission should alter the condition to provide for the importation of arbitrated terms from other states.

The interconnection terms that would benefit CLECs to the greatest extent and would more rapidly open the local market in Illinois are likely to be precisely those that have been arbitrated in other states. They are also the terms and conditions that are most likely to result in significant delay to competitive market developments in Illinois and in negotiation and arbitration costs for the CLECs and the ICC if they are not allowed to be imported expeditiously. These terms and conditions are probably the ones that CLECs do not already have in Illinois and that would be particularly valuable if freely imported into Illinois. It has taken arbitration before various commissions to gain many of most valuable, procompetitive and useful terms and conditions that are available today. The arbitrated terms and conditions should be thought of as the "best practices" available. Interconnection Condition A will not have a pro-competitive impact unless the Commission orders the availability of arbitrated terms from other states.

CONCLUSION

For the foregoing reasons, the Commission should grant Joint Movants' Application for Rehearing and Clarification.

Respectfully submitted,

MCI WORLDCOM, Inc.

By:_____

Darrell S. Townsley
MCI WORLDCOM, Inc.
205 North Michigan Avenue
Suite 3700
Chicago, Illinois 60601
(312) 470-3395

AT&T COMMUNICATIONS OF ILLINOIS, INC.

By:_____

William A. Davis, II
John F. Dunn
AT&T Law Department
222 West Adams Street
Suite 1500
Chicago, Illinois 60606-5307
(312) 230-2637

SPRINT COMMUNICATIONS COMPANY L.P. d/b/a SPRINT COMMUNICATIONS L.P.

By:_____

Kenneth Schifman
8140 Ward Parkway, 5E
Kansas City, Missouri 64114
(913) 624-6839

21st CENTURY TELECOM OF ILLINOIS, INC.

By:_____

Thomas Rowland
Rowland & Moore
55 East Monroe Street
Suite 3230
Chicago, Illinois 60603
(312) 803-1000

ATTACHMENT A

SBC/Ameritech shall provide each of the UNEs defined in the FCC's Local Competition Order and Third Order on Reconsideration. All such UNEs shall be available both individually and combined, at the interim rates (including the rates for loops, shared transport and local switching – with no glue charges or nonrecurring charges) determined in the Commission's TELRIC proceeding and subject to further proceedings in that docket, for use in providing any telecommunication service, including exchange service, exchange access service and interexchange service. This section shall be effective, with respect to a particular network element, pending a final order by the FCC (including all rehearings and appeals) on remand from AT&T Corp. v. Iowa Utilities Board, 119 S. Ct. 721(1999), regarding the availability of that element as an UNE.